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CRR 975 of 2017

Shaleen Khemani & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Aditya Ratan Tiwary
Mr. Suman Majumder ...for the petitioners

This application pertains to a prayer for quashing of the proceeding of complaint case no. CN/0023994 of 2015 presently pending before the learned Metropolitan Magistrate, 18th Court, Calcutta.

Opposite party no. 2 herein filed a complaint alleging commission of offence punishable under Section 138 read with Section 141 of the Negotiable Instrument Act (in short N.I. Act) against 11 accused persons including the present petitioners who are accused nos. 2,3,4,6,7,8 and 11. The learned Trial court after taking cognizance of the offence recorded initial deposition and issued process against all the aforesaid 11 accused persons under Section 204 of the Code.

Being aggrieved by the said proceeding, petitioners herein submit that the concept of vicarious liability is unknown to such proceeding unless specific averment has been made in the complaint against such office bearers.

Learned counsel for the petitioners further submits that neither in the complaint nor in the initial deposition recorded under Section 200 of the Code, any specific averment against the petitioners has been made and they have been made accused in the complaint only to invoke vicarious liability against them.

He further submits that it is settled law that to invoke vicarious liability under Section 141 of the N.I. Act, it is necessary to specifically aver in the complaint that at the time when the offence was committed, the present accused persons was in charge of and responsible for the conduct of the business of the company. Merely being a Director of a company is not sufficient to make the person liable under Section 141 of the N.I. Act, as there is no deemed liability of a Director.

He further submits that the trial Magistrate has failed to appreciate the proposition of law and he unnecessarily set criminal law into motion against the present petitioners. It is also settled law that the order of learned trial Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegation made in the complaint and in the evidence, oral and documentary in support thereof and he may not be a silent spectator at the time of recording initial deposition before summoning of the accused. In fact, trial Magistrate is required to carefully scrutinize the evidence brought on record and even for his satisfaction, he can put question to the complainant. In the instant case, learned trial Magistrate has issued process without considering as to whether there are sufficient ground for proceeding against the present petitioners. Accordingly the petitioners have prayed for quashing the impugned proceeding qua the petitioners.

In spite of service, opposite party is not represented.

I have considered the submissions made by the petitioners. It appears that in paragraph 2 of the complaint, the petitioner has stated that:-

> ***"the above named accused person no. 1 is the company and accused person no. 2,9,10 and 11 are Directors, accused no. 2,4,7 and 8 are the Whole Timed Directors and accused no. 5 is the Managing Director and accused no. 6 is the additional Director of the accused no. 1, company and also liable and responsible for day to day activities of the company and the accused persons no. 5 has signed the cheque(s) and having their address as it mentioned in the cause title hereto and had issued the cheque(s) as mentioned hereinunder."***

In his initial deposition Mr. Sanjay Dudheria did not speak anything about any particular role of the present petitioners who are merely Directors and additional Directors of the company. The cheque was issued by accused no. 5, Ishwari Prasad Tantia who is not petitioner herein.

In **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.** reported in **(2005) 8 SCC 89**, it has been specifically held by the Apex Court in paragraph 19 that it is necessary to specifically aver in the complaint under Section 141 of the N.I. Act that at the time the offence was committed, the accused was in charge of and responsible in the conduct of business of the company and this averment is an essential requirement of Section 141 of the Act and has to be made in the complaint. When this averment being not made in the complaint, the requirement of Section 141 cannot be said to be satisfied. It was further held that merely being a director of a company is not sufficient to make a person liable under Section 141 of the act and a Director in a company cannot be deemed to be in charge of and responsible to the company in the conduct of a business under Section 141 of the Act. The person sought to be made liable, to be in charge of and responsible for the conduct of the business of the company at the relevant time and this has to be averred as a fact as there is no deemed liability of a Director in such cases.

However, it was also held that by virtue of the office, if they hold post as Managing Director or Joint Managing Director, such persons are in charge of and responsible for the conduct of the business in the company. Therefore, they got covered under Section 141 of the Act. So far as the signatories of a cheque which is dishonoured, is concerned, he is clearly responsible in the incriminating act and will be governed under sub-section (2) of Section 141 of the Act. In the present context as I have quoted in paragraph 2 of the complaint that the petitioners are either whole time directors or additional Director but not Managing Director or Joint Managing Director or signatories of the cheque.

The aforesaid view of the Apex court also reiterated in the subsequent judgment passed by the Apex court in **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.** reported in **(2007) 4 SCC 70** where it was held in paragraph 16 that:-

> **"*Section 141 of the Act does not say that a Director of a company shall automatically be vicariously liable for commission for commission of offence on behalf of the company. What is necessary is that sufficient averments should be made to show that the person who is sought to be proceeded against on the premises of his being vicariously liable for commission of an offence by the company must be in charge and shall also be responsible to the company for the conduct of its business*".**

In the present context also, on a plain reading of the complaint as well as initial deposition, it is clear that the words "in charge of and was responsible to the company in the conduct of the business of the company" is completely absent".

In **Ashok Shewarkamani and others Vs. State of Andhra Pradesh and another** reported in **(2023) 8 SCC 473**, the Apex court quoting Section 141 (1) of the Act has clearly opined that the words "was in charge of" and "was responsible to the company in the conduct of the business of the company" cannot be read disjunctively and the same must be read conjunctively in view of the use of the word "and" in between.

In **Siby Thomas Vs. Somany Ceramics Limited reported in (2024) 1 SCC 348**, the apex court, relying upon the case of ***Ashok Shewarkamani (supra)*** held at paragraph 18 which is quoted hereunder:-

> ***"18.*** *Thus, in the light of the dictum laid down in Ashok Shewakramani case [Ashok Shewakramani v. State of A.P., (2023) 8 SCC 473 : (2023) 4 SCC (Civ) 116 : (2023) 3 SCC (Cri) 568 : 2023 INSC 692] , it is evident that a vicarious liability would be attracted only when the ingredients of Section 141(1) of the NI Act, are satisfied. It would also reveal that merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. A bare perusal of Section 141(1) of the NI Act, would reveal that only that person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished."*

In such view of the matter and on the basis of the decision cited above, the settled position of law is that the averments made in the complaint, filed by the complainant herein is not sufficient to satisfy the mandatory requirements under Section 141(1) of the N.I. Act and as the averments made in the plaint is insufficient to attract criminal liability, as well as vicarious liability upon the present petitioners, the proceeding against the present petitioners is liable to be quashed.

In the result, CRR 975 of 2017 stands allowed.

The impugned proceeding being complaint case no. CN/0023994 of 2015 presently pending before the learned Judicial Magistrate, 18th Court, Calcutta is quashed qua the petitioners namely, Sheleen Khemani, Banwari Lal Ajitsaria, Rahul Tantia, Sandeep Kumar Saraogi, Sandip Bose, Murarelal Agarwal and Bajranj Lal Agarwal.

Urgent Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)